

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

WABASH POWER EQUIPMENT, CO., and)
NICKELSON INDUSTRIAL SERVICE, INC.,)
Plaintiffs,)

v.)

CAUSE NO.: 2:13-CV-202-TLS

BTU STATE LINE, LLC,)
BTU SOLUTIONS, LLC,)
BTU SOLUTIONS DE, LLC, and)
STATE LINE ENERGY, LLC,)
Defendants.)

ORDER

The Plaintiffs have sued the entities they believe are responsible for the harm the Plaintiffs incurred in connection with an auction of equipment from an electrical plant in Hammond, Indiana. Defendants BTU State Line LLC's, BTU Solutions, LLC's, BTU Solutions DE, LLC's, and State Line Energy, LLC, have moved to dismiss the Complaint, arguing that the Plaintiffs failed to state a plausible claim for relief against any of the Defendants. The BTU Defendants also moved to dismiss the Complaint pursuant to Rule 12(b)(2) on grounds that there is no jurisdiction over them in the Northern District of Indiana. The Plaintiffs filed a response on August 29, 2013, and Defendants filed a reply on September 16, 2013. On November 20, 2013, this Court referred the Motion to Dismiss to Magistrate Judge John E. Martin for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

On March 13, 2014, the Magistrate Judge issued a Report and Recommendation setting forth a recommendation that the Court deny the Defendants' Motion to Dismiss Plaintiffs' Complaint. Specifically, that the Court deny the request to dismiss for failure to state a claim, and deny without prejudice and with leave to refile the request to dismiss for lack of personal jurisdiction. Additionally, the Magistrate Judge recommended that the Plaintiffs be allowed to

conduct discovery on the question of personal jurisdiction, pursuant to a schedule set by the Magistrate Judge.

This Court's review of the Magistrate judge's Report and Recommendation is governed by 28 U.S.C. § 636(b)(1)(C) which provides in part:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

Objections to the Magistrate's Judge's Report and Recommendations must be made within fourteen days of service of a copy of the Report. *Id.*; Fed. R. Civ. P. 72(b). No party has filed an objection to the Magistrate Judge's Report and Recommendation.

Upon review of the parties' submissions and the Report and Recommendation, the Court ACCEPTS the Report and Recommendation [ECF No. 31] in its entirety and thereby:

- (1) DENIES the Defendants' Motion to Dismiss for failure to state a claim [ECF No. 15];
- (2) DENIES WITHOUT PREJUDICE the Defendants' Motion to Dismiss for lack of personal jurisdiction [ECF No. 15]; and
- (3) ALLOWS the Plaintiffs to conduct limited discovery on the issue of whether there is personal jurisdiction over any or all of the BTU Defendants in Indiana, pursuant to a separate schedule order issued by the Magistrate Judge.

SO ORDERED on March 31, 2014.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT
FORT WAYNE DIVISION